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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP

Chairman

GARY PIERCE

Commissioner

BRENDA BURNS

Commissioner

BOB BURNS

Commissioner

SUSAN BITTER SMITH

Commissioner

Arizona Corporation Commission

DOCKETED

SEP 15 2014

DOCKETED BY

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IN THE MATTER OF THE PROPOSED  
RULEMAKING TO MODIFY THE  
RENEWABLE ENERGY STANDARD AND  
TARIFF RULES

DOCKET NO. RE-00000C-14-0112

DECISION NO. 74753

ORDER

Open Meeting  
September 9 and 10, 2014  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On March 31, 2014, Arizona Corporation Commission ("Commission") Staff ("Staff") filed a request with docket control to open a generic docket for the purpose of commencing a proposed rulemaking on the Renewable Energy Standard and Tariff ("REST") rules as directed by the Commission.

2. On February 26, 2014, the Commission issued Decision No. 74365 that ordered:

"that the REST rules shall be opened for the purpose of developing a new methodology for utilities to comply with renewable energy requirements that is not based solely on the use of RECs and that Staff shall, after consultation with utilities, interveners in this docket, and other interested stakeholders, filed proposed new rules no later than April 15, 2014 with the Commission to address a Notice of Proposed Rulemaking on this matter at its May 2014 Open Meeting or as soon as is practical after that date." (page 55, lines 7-13)

3. The question of REST compliance in a post-incentive era was raised by Arizona Public Service Company ("APS") in its June 29, 2012 filing of its proposed 2013 REST plan, wherein APS

1 requested approval of a Track and Record method for meeting its distributed energy ("DE")  
2 compliance requirements. Similarly, Tucson Electric Power Company ("TEP") and UNS Electric,  
3 Inc. ("UNS") requested guidance from the Commission on how to demonstrate REST compliance in  
4 a post-incentive time, in their July 2, 2012 filings of their proposed 2013 REST plans.

5 4. This issue was discussed during the fall of 2012 as the APS, TEP, and UNS 2013 REST  
6 plans were considered by the Commission.

7 5. The Commission Decisions on the APS, TEP, and UNS 2013 REST plans, issued January  
8 31, 2013, (Decision Nos. 73636, 73637, and 73638 respectively) ordered that the Track and Record  
9 proposal and alternatives thereto would be the subject of a hearing. The Commission also directed  
10 the Hearing Division to include in its Recommended Opinion and Order on this matter whether  
11 adoption of the Track and Record proposal (or alternatives thereto) would require modification of the  
12 REST rules.

13 6. The hearing was held on June 3-6, 2013 and June 21, 2013. The Track and Record  
14 proceeding culminated in the issuance of Decision No. 74365.

15 7. On April 4, 2014 Staff filed its Notice of Compliance Filing Per Decision No. 74365. In  
16 this filing Staff provided seven options for the Commission to consider:

17 A. Track and Monitor – This option would track all renewable energy production in a  
18 utility's service territory, noting whether the utility owns the Renewable Energy Credits ("RECs") or  
19 not and would reduce the REST requirement to reflect production where the utility does not own the  
20 RECs.

21 B. Process Where Utility Would Purchase Least Cost RECs or kilowatt hours ("kWhs") –  
22 Under this option, utilities would purchase RECs or renewable kWhs to meet REST requirements and  
23 would be required to demonstrate that such purchases were least-cost.

24 C. Creation of a Maximum Conventional Energy Requirement – This option would  
25 change the dynamic of the REST rules by changing the focus from a minimum required percentage of  
26 renewable energy to a maximum allowed percentage of conventional energy.

27 D. Mandatory Up-Front Incentives ("UFI") – Under this option, mandatory UFIs would  
28 be offered, requiring the customer to accept the UFI in exchange for the utility receiving the RECs.

1 The UFI mandate and/or Distributed Generation/Distributed Energy ("DG/DE") mandate could be  
2 waived.

3 E. REC Transfer Associated with Net Metering – Under this option customers installing  
4 DG would be required to transfer all RECs produced by that DG if the customer wanted to  
5 participate in the utility's net metering.

6 F. Recovery of DG/DE Costs Through the Standard Rate Case Process – This option  
7 would not allow utilities to recover the costs of complying with the DG/DE requirement through the  
8 REST Tariff/Surcharge. Utilities would decide how best to comply with the DG/DE requirement  
9 and could seek recovery of the costs of doing so through the regular rate case process.

10 G. Track and Record – Under this option, utilities would track, record, and report all  
11 renewable kWh produced in their service territory and report kWh associated with RECs not owned  
12 by the utility strictly for informational purposes. The Commission could consider all available  
13 information when determining compliance with the REST rules.

14 8. A number of entities filed comments in response to the April 4, 2014 Staff filing. On May  
15 21, 2014, Commissioner Brenda Burns filed a letter with the docket, introducing a proposal to adopt a  
16 form of the Track and Record method. The letter and an attached appendix present the following  
17 characteristics of this form of the Track and Record method:

18 A. A utility would track, record, and report all renewable kWhs produced within its  
19 service territory.

20 B. In reporting to the Commission, a utility would report all renewable kWhs produced in  
21 its service territory, differentiating between kWhs for which it owns the RECs and kWhs for which it  
22 did not own the RECs.

23 C. The reporting of kWhs not owned by the utility would be acknowledged.

24 D. The Commission could consider all available information.

25 E. The following statement or something similar would be part of the REST rules:

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1           “Any Renewable Energy Credit (REC) created by the production of renewable  
2           energy which the Affected Utility does not own shall be retained by the entity creating  
3           the REC. Such REC may not be considered used or extinguished by any Affected  
4           Utility without approval and proper documentation from the entity creating the REC,  
          regardless of whether or not the Commission acknowledged the kWhs associated with  
          non-utility owned RECs.”

5           9. The proposal is designed to (1) preserve the existing 15 percent overall requirement and 30  
6           percent DG carve-out (4.5 percent overall), (2) resolve the issue of double counting, an (3) not require  
7           ratepayers to pay for further subsidies.

8           10. On July 7, 2014, the Solar Energy Industries Association (“SEIA”) filed comments in  
9           response to Commissioner Brenda Burns’ letter and subsequent letters from Commissioner Gary  
10          Pierce and Commissioner Bob Burns. SEIA indicates that it is supportive of the proposed language in  
11          Commissioner Brenda Burns’ letter, subject to certain important modifications. SEIA’s letter includes  
12          an appendix with proposed modifications to Commissioner Burns’ Appendix, with one set of  
13          modifications for an energy-based Track and Record method and the other set of modifications for a  
14          capacity-based Track and Record method.

15          11. SEIA’s proposed modifications remove references to the Commission acknowledging RECs  
16          that are not owned by the Affected Utility and replace it with language that states such RECs would  
17          not be counted toward REST compliance. SEIA’s modifications also remove the statement that the  
18          Commission could consider all available information. SEIA modifications also change wording  
19          regarding RECs not owned by the utility to say that such RECs “may” rather than “shall” be retained  
20          by the entity creating the REC as well as saying that such RECs “shall not be considered owned, used,  
21          or extinguished” in place of “may not be considered used or extinguished.”

22          12. SEIA does not state whether its proposal would accomplish the same objectives sought by  
23          Commissioner Brenda Burns’ proposal.

24          13. On August 1, 2014, the Residential Utility Consumer Office (“RUCO”) filed comments in  
25          this docket, asking the Commission to consider possible REST rule changes in recognition of  
26          proposed new Environmental Protection Agency (“EPA”) rule 111(d). RUCO’s comments do not  
27          directly address the proposals contained in Commissioner Brenda Burns’ letter. RUCO suggests two  
28          possible methods to assist utilities in acquiring DG RECs from willing solar adopters. One method

1 would be to create a "back-fill" policy whereby a DG customer who decides to retain RECs would  
2 incur a small charge that pays the cost of utilities going out and buying inexpensive unbundled RECs.  
3 RUCO's second method would be to have customers who retain their DG RECs pay a different  
4 LFCR "net metering" charge than other customers. RUCO recommends that if the Commission does  
5 not adopt either of these two methods, that the Commission insert the following language (or  
6 something similar) in the REST rules:

7 "Affected utilities, upon approval of the Commission, may be authorized to use non-  
8 DG RECs (bundled or unbundled) to satisfy compliance of the DG carve-out.  
9 However, the amount of non-DG RECs applied to the carve-out cannot exceed the  
number of RECs and/or kWhs produced by customers who have not exchanged  
their RECs to the utility in their respective service territory."

10 14. RUCO does not state whether its proposals would accomplish the same objectives sought by  
11 Commissioner Brenda burns' proposal.

12 15. On July 22, 2014, the Commission directed Staff to move forward with preparing draft  
13 REST rules to reflect the content of Commissioner Brenda Burns' May 21, 2014 letter.

14 16. Attached is Staff's initial draft for the Proposed Rulemaking to Modify the Renewable  
15 Energy Standard and Tariff Rules incorporating Commissioner Brenda Burns' proposed changes.

16 17. Staff encourages all interested parties to provide written comments on the draft rules. Please  
17 reference Docket No. RE-00000C-14-0112 on all comments.

18 18. Please file an original and 13 copies of your comments with the Commission's Docket  
19 Control Center, 1200 West Washington Street, Phoenix, Arizona 85007.

20 19. Based on consultations with the Hearing Division, Staff has recommended that the  
21 Commission direct Staff to file a Notice of Proposed Rulemaking with the office of the Secretary of  
22 State, no later than September 19, 2014, for publication in the Arizona Administrative Register no  
23 later than October 10, 2014.

24 20. Staff has further recommended that the deadline for initial written comments be set for  
25 November 10, 2014, and for responsive written comments by November 14, 2014.

26 21. Staff has further recommended that the Commission direct the Hearing Division to hold  
27 oral proceedings to receive public comment on the Notice of Proposed Rulemaking on November 14,  
28 ...

1 2014, in Hearing Room 1 at the Commission's offices in Phoenix, Arizona and on November 12,  
2 2014, in Room 222 of the Commission's offices in Tucson, Arizona.

3 22. Staff has further recommended that the Hearing Division establish additional procedural  
4 deadlines and requirements as may be necessary, consistent with the Administrative Procedures Act  
5 and prior Commission rulemakings.

6 CONCLUSIONS OF LAW

7 1. Pursuant to Article XV of the Arizona Constitution and A.R.S. Title 40 generally, the  
8 Commission has jurisdiction over the matters raised herein.

9 2. It is in the public interest to adopt Staff's recommendations.

10 ORDER

11 IT IS THEREFORE ORDERED that Staff file a Notice of Proposed Rulemaking with the  
12 office of the Secretary of State, no later than September 19, 2014, for publication in the Arizona  
13 Administrative Register no later than October 10, 2014.

14 IT IS FURTHER ORDERED that the deadline for initial written comments be set for  
15 November 10, 2014 and for responsive written comments by November 14, 2014.

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IT IS FURTHER ORDERED that the Hearing Division hold oral proceedings to receive public comment on the Notice of Proposed Rulemaking on November 14, 2014 in Hearing Room 1 at the Commission's offices in Phoenix, Arizona and on November 12, 2014 in Room 222 the Commission's offices in Tucson, Arizona.

IT IS FURTHER ORDERED that that the Commission establish additional procedural deadlines and requirements as may be necessary, consistent with the Administrative Procedures Act and prior Commission rulemakings.

IT IS FURTHER ORDERED that this Order be made effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

  
CHAIRMAN

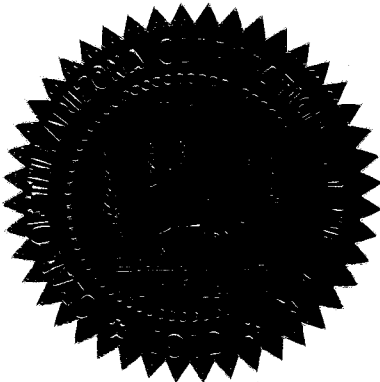
  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

**DISSENT**

COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 15<sup>th</sup> day of September, 2014.

  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT: 

DISSENT: \_\_\_\_\_

SMO:RBG:sms\MAS

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12 Other Affected Utilities

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14 AJO Improvement Company  
P.O. Drawer 9  
15 Ajo, Arizona 85321

16 Duncan Valley Electric Cooperative  
P.O. Box 440  
17 Duncan, Arizona 85534

18 Graham County Electric Cooperative  
19 P.O. Drawer B  
Pima, Arizona 85543

20 Navopache Electric Cooperative  
21 1878 W. White Mountain Boulevard  
Lakeside, Arizona 58929

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23 Trico Electric Cooperative  
P.O. Box 930  
24 Marana, Arizona 85653-0930

25 Morenci Water and Electric Company  
P.O. Box 68  
26 Morenci, Arizona 85540

27 Sulphur Springs Valley Electric Cooperative  
28 350 N. Haskell Avenue  
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**ARTICLE 18. RENEWABLE ENERGY  
STANDARD AND TARIFF**

**R14-2-1801. Definitions**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. No change
- K. No change
- L. No change
- M. No change
- N. No change
- O. No change
- P. No change
- Q. No change
- R. No change

**R14-2-1802. Eligible Renewable Energy Resources**

- A. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
    - a. No change
    - b. No change
  - 5. No change
  - 6. No change
  - 7. No change
  - 8. No change
  - 9. No change
    - a. No change
    - b. No change
    - c. No change
  - 10. No change
  - 11. No change
- B. No change
  - 1. No change
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  - 5. No change
  - 6. No change
  - 7. No change
  - 8. No change
  - 9. No change
  - 10. No change
  - 11. No change
  - 12. No change
- C. No change
- D. No change

**Historical Note**

**R14-2-1803. Renewable Energy Credits**

- A. No change

- B. No change
- C. No change
- D. No change
- E. No change
- F. No change

**R14-2-1804. Annual Renewable Energy Requirement**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change

**R14-2-1805. Distributed Renewable Energy Requirement**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. Any Renewable Energy Credit created by production of renewable energy which the Affected Utility does not own shall be retained by the entity creating the Renewable Energy Credit. Such Renewable Energy Credit may not be considered used or extinguished by any Affected Utility without approval and proper documentation from the entity creating the Renewable Energy Credit, regardless of whether or not the Commission acknowledged the kWhs associated with non-utility owned Renewable Energy Credits.
- G. The reporting of kWhs associated with Renewable Energy Credits not owned by the utility will be acknowledged.

**R14-2-1806. Extra Credit Multipliers**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- G. No change

**R14-2-1807. Manufacturing Partial Credit**

- A. No change

- B. No change
- C. No change

**R14-2-1808. Tariff**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- C. No change
- D. No change
- E. No change

**R14-2-1809. Customer Self-Directed Renewable Energy Option**

- A. No change
- B. No change
- C. No change

**R14-2-1810. Uniform Credit Purchase Program**

- A. No change
- B. No change

**R14-2-1811. Net Metering and Interconnection Standards**

- A. No change

**R14-2-1812. Compliance Reports**

- A. Beginning April 1, 2007, and every April 1st thereafter, each Affected Utility shall file with Docket Control a report that describes its compliance with the requirements of these rules for the previous calendar year and provides other relevant information. The Affected Utility shall also transmit to the Director of the Utilities Division an electronic copy of this report that is suitable for posting on the Commission's web site.
- B. The compliance report shall include the following information:
  - 1. The actual kWh of energy produced within its service territory and the actual kWh of energy or equivalent obtained from Eligible Renewable Energy Resources, differentiating between kWhs for which the Affected Utility owns the Renewable Energy Credits and kWhs produced in the Affected Utility's service territory for which the Affected Utility does not own the Renewable Energy Credits;
  - 2. No change
  - 3. No change
  - 4. No change

- 5. No change

- 6. No change

- C. The Commission may consider all available information and may hold a hearing to determine whether an Affected Utility's compliance report satisfies the requirements of these rules.

**R14-2-1813. Implementation Plans**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- C. No change

**R14-2-1814. Electric Power Cooperatives**

- A. No change
- B. No change

**R14-2-1815. Enforcement and Penalties**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
- C. No change
- D. No change

**R14-2-1816. Waiver from the Provisions of this Article**

- A. No change
- B. No change
- C. No change

**Appendix A. Sample Tariff**

No change

- 1. No change
- 2. No change
- 3. No change
- 4. No change